

U.S. House and Senate Notification
Monday, July 12, 2010

To: Congressional Health Staff

From: Amy Hall
Director, Office of Legislation
Centers for Medicare & Medicaid Services

Re: CMS Issues Proposed Rule on Civil Money Penalties for Nursing Homes

Today, the Centers for Medicare & Medicaid Services (CMS) published a proposed rule on civil money penalties for nursing homes. Section 6111 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111-148) amends sections 1819(h) and 1919(h) of the Social Security Act to incorporate specific provisions pertaining to the imposition and collection of civil money penalties (CMPs) when facilities do not meet Medicare and Medicaid program participation requirements. These new provisions are intended to improve the efficiency and effectiveness of the nursing home enforcement process, particularly as it relates to civil money penalties imposed by CMS. This proposed rule strengthens protections for nursing home residents, due process for nursing homes, incentives for prompt self-correction of deficiencies, and quality improvement by providing that a portion of the CMP funds attributable to Medicare may be used for the protection or benefit of nursing home residents.

Specifically, these proposed regulations would:

- After the conclusion of any informal dispute resolution, permit CMS to collect and place CMPs into an escrow account pending the resolution of any formal appeal.
- Provide an opportunity for an Independent Informal Dispute Resolution (IDR) when a CMP has been imposed. Per day CMPs would be effective and continue to accrue but would not be collected during the time that a CMP is subject to the Independent IDR process.
- Require completion of any Independent IDR within 90 days of the notice of a CMP.
- Provide for the collection of the CMP upon the earlier of: 1) completion of an Independent IDR, or 2) 90 days after notice of the imposition of the CMP.
- Establish that when a facility is successful in a formal appeal, the applicable portion of any CMP amount being held in escrow will be returned to the facility with interest.
- Establish new authority for CMS to reduce a CMP it imposes by 50 percent (based on criteria outlined by the Affordable Care Act) when CMS determines that a facility has self-reported and promptly corrected its noncompliance, and waived its right to a hearing.

- Provide that a portion of the CMP attributable to Medicare, which is currently conveyed to the U.S. Treasury, may instead be used for the protection or benefit of nursing home residents.

The proposed rule can be found on the *Federal Register* website at <http://edocket.access.gpo.gov/2010/pdf/2010-16927.pdf>. Also, CMS' Survey and Certification group issued a memorandum to all state survey agency directors informing the directors of the proposed rule. A copy of the memorandum can be found on the CMS website at http://www.cms.gov/surveyscertificationgeninfo/downloads/srvyletter10_23.pdf.

If you have any questions about this notification, please contact the CMS Office of Legislation.